

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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FREDERICK LEE,

Plaintiff,

ANSWER

- against -

Case No.: 08-CIV-2382

CITY OF NEWBURGH and POLICE
OFFICER MICHAEL PITT,

Defendant(s).

ASSIGNED:
KENNETH M. KARAS, USDCJ

-----X
Defendants CITY OF NEWBURGH and POLICE OFFICER MICHAEL PITT,
answering the verified complaint of the plaintiffs herein:

1. Deny they have any knowledge or information sufficient to form a belief as to the allegations contained in paragraphs 3, 8, 9, 10, 11, 18, and 19 of the complaint.
2. Deny they have any knowledge or information sufficient to form a belief as to the Plaintiff's physical condition and deny the balance of the allegations contained in paragraph 14 of the Complaint.
3. Admit that Officer Pitt followed proper and accepted procedures in arresting plaintiff and deny the balance of the allegations contained in paragraph 15 of the Complaint.
4. Deny the allegations contained in paragraph 1 and 2 of the Complaint and refer all questions of law to the trial court for resolution.
5. Deny the allegations contained in paragraph 17 of the complaint concerning communications to Defendant Officer and deny they have any knowledge or information sufficient to form a belief as to the balance of the allegations.

6. Admit the allegations contained in paragraphs 4, 7, and 12 of the Complaint.
7. Admit the allegations contained in paragraph 5 of the Complaint only in that Defendant Michael Pitt is a police officer employed by the City of Newburgh and was acting in that capacity and deny any knowledge or information sufficient to form a belief as to the balance of the allegations.
8. Admit the allegations contained in paragraph 6 of the Complaint only in that the City is a municipal corporation and deny the balance of the allegations, referring all issues of law to the trial court for determination.
9. Admit the allegations contained in paragraph 13 of the Complaint only in that defendant Police Officer Michael Pitt arrested the Plaintiff and performed procedures necessary to effectuate the arrest and deny any knowledge or information sufficient to form a belief as to the balance of the allegations.
10. Admit the allegations contained in paragraph 16 of the Complaint only in that Plaintiff was properly processed through arraignment following his arrest and deny any knowledge or information sufficient to form a belief as to the balance of the allegations.

**AS AND FOR DEFENDANTS' RESPONSE TO
PLAINTIFFS' FEDERAL CAUSES OF ACTION**

11. Defendants reiterate and reallege each and every response made to the allegations contained in the paragraphs of the Complaint designated 1 through 19 as referred to in paragraph 20 of the Complaint with the same force and effect as though fully set forth at length herein.

12. Deny the allegations contained in paragraphs 21 of the Complaint.

**AS AND FOR DEFENDANTS' RESPONSE TO
PLAINTIFFS' PENDANT STATE CAUSES OF ACTION**

13. Defendants reiterate and reallege each and every response made to the allegations contained in the paragraphs of the Complaint designated 1 through 19 and 21 as referred to in paragraph 22 of the Complaint with the same force and effect as though fully set forth at length herein.
14. Deny the allegations contained in paragraphs 23 and 26 of the Complaint and refer all questions of law to the trial court for resolution.
15. Deny the allegations contained in paragraphs 25, 27, 28, and 29 of the Complaint.
16. Admit the allegations contained in paragraph 24 of the Complaint.

AS AND FOR A FIRST AFFIRMATIVE DEFENSE

17. The Defendants are entitled to qualified immunity.

AS AND FOR A SECOND AFFIRMATIVE DEFENSE

18. At all times herein mentioned in Plaintiff's Complaint Defendant Michael Pitt was a Police Officer of the City of Newburgh and was acting as such. He was following procedures either prescribed or adopted by his department. He acted in good faith using only reasonable force to effect Plaintiff's arrest, without any malice whatsoever and within the bounds of all lawful mandates.

AS AND FOR A THIRD AFFIRMATIVE DEFENSE

19. All non-federal, otherwise known as state causes of action, are time barred pursuant to the applicable time limitations of the New York State General

Municipal Law.

AS AND FOR A FOURTH AFFIRMATIVE DEFENSE

20. Whatever injuries were suffered by the Plaintiff herein, if any there were, were done so as a result of the culpable conduct of the Plaintiff and any judgment obtained against the Defendants must be reduced by the apportioned share of the Plaintiff's culpable conduct.

AS AND FOR A FIFTH AFFIRMATIVE DEFENSE

21. That pursuant to CPLR 4545(c), any award to the Plaintiff for economic loss shall be reduced by the amount of economic loss reimbursed by collateral source.

Dated: April 17, 2008
Poughkeepsie, New York

Yours etc.,

GELLERT & KLEIN, P.C.,

By: 

JAMES M. FEDORCHAK(9214)
Attorneys for Defendant CITY
OF NEWBURGH and POLICE OFFICER
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Plaintiff,

-against-

AFFIDAVIT OF SERVICE

THE CITY OF NEWBURGH and POLICE
OFFICER MICHAEL PITT

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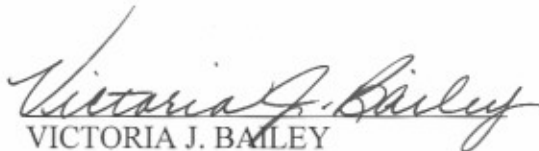
Defendants.
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STATE OF NEW YORK)
) ss.:
COUNTY OF DUTCHESS)

VICTORIA J. BAILEY, being duly sworn, deposes and says: I am not a party to the action, am over 18 years of age and reside at Poughkeepsie, New York.

On **April 24, 2008**, I served a copy of a **Answer** in the following manner: by mailing the same in a sealed envelope, with postage prepaid thereon, in a post-office or official depository of the U.S. Postal Service within the State of New York, addressed to the last known address of the following addressee(s):

TO: John Cobb, Esq.
COBB & COBB
Attorneys for Plaintiff
724 Broadway
Newburgh, NY 12550


VICTORIA J. BAILEY

Sworn to before me this
24th day of April, 2008.


Notary Public

BELINDA J. RANDALL
NOTARY PUBLIC - State of New York
No.: 01FR4986046
Appointed in Ulster County
Commission Expires 4/30/10